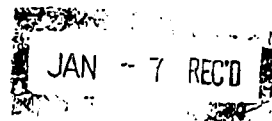


cc: Debbie  
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Charles A. James  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
901 Pennsylvania Ave, N.W.  
Washington, D.C. 20530

RE: The Microsoft Antitrust Lawsuit

Dear Mr. James:

Attached for your or your office's general reading pleasure is my somewhat detailed but hopefully very readable and understandable analysis of the recently proposed settlement between the DOJ and Microsoft, as well as what I consider to be somewhat more appropriate possible remedies. The document "Some Remedy Guidelines For Correcting Key Microsoft Monopolistic Strategies and Business Practices" is pretty self-explanatory both in title and in content. I am personally extremely unhappy with what appears to be nothing less than total capitulation by the Department of Justice in regards to Microsoft case and I can only hope that the states will go successfully forward with their own actions, and that the Tunney Act will serve a sufficient protection against final adoption of the settlement. I should mention that this document is submitted for your consideration as a singular effort on my part, with no input or connection to any other party to the antitrust proceedings against Microsoft. I just happen to be someone well-versed in the technical issues involved and their meaning and impact related to computer and Internet matters. Copies of the attached document are being sent to my state's Attorney General, Thomas Reilly, to the states' lead attorney, Brendan Sullivan, and to Judge Kollar-Kotelly.

Sincerely,



Bernie Conneely

JAN - 7 REC'D

## Some Remedy Guidelines For Correcting Key Microsoft Monopolistic Strategies And Business Practices

-Bernie Conneely

(bconneely@yahoo.com)

### Introduction

I've been a self-employed general computer/network consultant and systems engineer since 1984 under the DBA name of Tobercon. I have seen and have dealt with a lot of issue relating to Microsoft's rise from mostly being the supplier of DOS to its current monopolistic pre-eminence in the computer industry. I've also been following the various lawsuits against Microsoft with some interest: you would be hard-pressed to find any hard-core tech people not aware of at least some of the "tricks" Microsoft has used over the years to leverage its products onto computers, from simple "bundling" to heavy-handed licensing agreements to the overt sabotage of competing products. Most, if not all of, these practices have come up at different points in the lawsuits, most especially the DOJ antitrust suit. Judge Thomas Penfield Jackson's remarks may have been intemperate in a legal setting, but they were unarguably accurate in their depiction of Microsoft's behavior over the years. Actually, I felt the evidence against Microsoft to be so hefty and compelling that even a Republican administration generally favorable towards big business would be obliged to follow through in punishing and reigning in Microsoft's still-continuing misbehavior.

### Summary and Critique of the Proposed DOJ Settlement

Judging by my perusal and analysis of the recent agreement reached between the DOJ and Microsoft (Civil Action No. 98-1232), it would appear I was mistaken. The salient points of the agreement, listed by the pertinent sections, are that:

*III C.1-2:* Microsoft cannot prevent computer vendors from installing icons that run or install so-named "Middleware" products from Microsoft's competitors. Note that the key terms here are "icons" and "Middleware" which is defined in the agreement glossary as products similar to Microsoft's Internet Explorer, Java Virtual Machine, Media Player, Messenger, and Outlook Express. It's unclear if the competing products themselves can be installed or merely the icons for their installation, or if this applies to Middleware products that have no Microsoft equivalent like Adobe Acrobat Reader, and whether too if this has any bearing on the installation of a non-Middleware product like a word processor or database manager.

*III C.3-5:* Microsoft can't prevent a computer vendor from installing the option to boot into an alternative operating system (typically Linux) or from having a non-Microsoft Middleware product launch on start-up.

*III F-G:* Microsoft cannot prevent PC manufacturers, whether by licensing agreement or by threat of retaliation, from offering or installing competing products to Microsoft's operating system, Windows (the current version being "XP") or Microsoft's Middleware products. This sounds reasonable enough, but the paragraph at III F.3 has this section. "Microsoft may enter into agreements that place limitations on an ISV's ["Independent Software Vendor," meaning a

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software developer other than Microsoft] development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft "

Got that?

*III H.1:* Basically states that a consumer will be given easy means to remove the icons for any Microsoft or non-Microsoft Middleware program. Note that removing the icon for any Windows program, whether from the Windows desktop, the Start Menu, or the bottom bar does nothing to actually uninstall the program – it merely hides it: the program files and registry entries will still be there and program itself still active, especially if it's a Microsoft product.

*III H.2-3:* Supposedly allows users to use the Middleware products from Microsoft's competitors in place of Microsoft's, and disallows Microsoft from using Windows to alter icon and menu settings of competitors' products installed by an OEM ("Original Equipment Manufacturer," usually a computer manufacturer who installs licensed versions of Microsoft Windows.)

However, towards the end of III H.3 are two addendum sections that allow for Microsoft Middleware products to be automatically invoked when: No.1, when accessing a "server maintained by Microsoft" -- presumably any Microsoft-owned web site like MSN or Microsoft.com and possibly sites co-owned by Microsoft like MSNBC), and No.2, when a some Microsoft-specific function like "ActiveX" is requested. What this means is that a consumer will be permitted to use a non-Microsoft e-mail client or Web browser, but any Microsoft-related site can automatically invoke Internet Explorer, and Microsoft's e-mail clients Outlook or Outlook Express may be required to access e-mail from a Microsoft-related site, overriding the consumer's choices. Requiring Outlook or Outlook Express as part of an MSN account is well within Microsoft's rights and has precedent (most notably AOL) just so long as it's made clear to consumers that MSN is a closed, proprietary online-service that limits the means of access, unlike a general Internet access account. ActiveX controls, however, have been a means for recent worms like NIMDA to infect PC's via Internet Explorer, a prudent computer user may not want ActiveX active at all or have Internet Explorer popping up unwantedly

*III J.1:* Allows Microsoft to keep secret all its proprietary codes and encryption algorithms. This in effect will let Microsoft continue its policy of making it difficult if not impossible for competing products to interact or replace its own. "Secure Password Authentication" for example is an encryption technique that prevents competing e-mail clients from accessing MSN. Likewise if a typical consumer who was not even using MSN wanted to change from Outlook Express to a competing e-client he/she would find transferring over existing saved e-mails to be all but impossible, due again to encoding techniques unique to Microsoft and very probably designed to impede or prevent such changeovers to competing products

The entire proposed settlement is seemingly a major victory for Microsoft. all "bundling" issues were dropped; competing products may be installed, but removal and total replacement of Microsoft's equivalent products can be blocked, there is apparently no penalty to Microsoft for violating prior agreements; and all that is demanded of Microsoft is that it doesn't overtly punish

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computer manufacturers for installing any products from Microsoft's competitors and that it doesn't overtly sabotage the installation of said products. Is this not the corporate equivalent of being put on probation, with not even the equivalent of having to do community service?

### Alternative Remedy Strategies

Given the DOJ's apparent failure in reaching a true "remedy" in any meaningful sense, I've been moved to add my own expert 2-cents to the effort by going over what I consider to be some genuine and far more appropriate remedies, explained in understandable terms (I hope) with pertinent examples, that are really needed to treat Microsoft monopolistic behavior. The DOJ capitulation is very unfortunate, but hopefully the states can show the backbone necessary to set things right.

Before I go into the details, I should mention that regardless of the legalities involved, letting Microsoft continue to do what it has been doing will absolutely NOT benefit consumers in any way, shape, or form. Because of Microsoft's current monopolistic position:

- I. Consumers and businesses are at a higher risk to virus attacks because of inherent security and coding flaws in all of Microsoft products. The argument that Microsoft products are simply targeted more because they are the most popular is false: for example Apache web servers far outnumber Microsoft IIS web servers, but Apache was not affected by the Code Red and NIMDA worms. Microsoft has an ill-considered philosophy of sticking in programming "hooks" into all of its products, which in turn have been very exploitable by virus writers. Very few other companies do this because of the inherent security risk in doing so.
- II. Removing Internet Explorer from Windows 98 or ME will speed up the computer and make it more stable. The most commonly used "tool" to remove IE is "98Lite" a product downloadable from [www.98lite.net](http://www.98lite.net). Removing IE this way is a common technique for audio professionals doing high-end production work on a PC to maximize throughput and enable the most system resources for the audio software. The average consumer, though, has no clue about being able to do this, and Microsoft's insistence that IE and Windows are inextricably tied together has confused the issue. The relationship of IE to Windows is very much analogous to a TV having a built-in VCR. Yes, the VCR and TV components are sort of "inextricably tied together" in a disingenuous manner of speaking, but nevertheless the VCR can be removed from the TV if one had the technical wherewithal, and without any undo damage to the functionality of the TV component. And obviously and most importantly, the VCR component can be "unbundled" quite easily by the manufacturer, regardless. Just as Microsoft could do easily with IE.
- III. If a consumer wanted to use a more stable operating system than Windows, like Linux, or a more advanced one, like BeOS, it would be extremely difficult, if not impossible for that consumer to be able to exchange certain types of files with other users, or even access everything available on the Internet, thanks to the monopolistic position of key Microsoft application products like Powerpoint, as well as certain web sites only allowing access via IE in clear violation of W3C guidelines ("W3C" is the World Wide Web Consortium, which is suppose to be the final authority regarding web standards). Other, much smaller companies have been good at offering versions of their products to run on alternative

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operating systems, but Microsoft has not – they only support Windows and Macintosh (somewhat). Consequently even a very, very good product like BeOS can fail and is failing because certain key Microsoft products don't run on it and there are no suitable, compatible alternatives. Even Linux, while making good headway in server applications and despite the enormous amount of development surrounding it, has hit a brick wall as far as appearing on desktop computers primarily because of incompatibilities with a Microsoft-dominated environment in home and in general business.

- IV. Microsoft's dominance and success in bundling has in general prevented good and even demonstrably superior products from being introduced to the average consumer. Even one-time established and dominant products like Novell Netware and WordPerfect have gone in to such eclipse that they are now marginal products despite still being superior products in many respects to Microsoft's.
- V. Each newer version of Windows is harder to repair than the previous version. Microsoft always claims each new version to be more stable and have more features than the version it replaces, and to some extent this is true: Windows 3.11 use to crash quite a bit, and Windows 2000 does crash far less than Windows 95 or 98; however, while Windows 3.11 would crash fairly frequently, it very rarely went "bad" to the point it needed expert troubleshooting – generally a simple reboot fixed things. Crashes on subsequent versions were usually more serious and required much more time to fix. Damage caused by viruses are often extremely difficult to recover from in the later versions of Windows, as removal instructions for the NIMDA worm on any antivirus web site will attest to. The same also applies to Microsoft Office: since the average consumer can't completely uninstall Office (you need a special software "tool" from Microsoft) certain types of damage from viruses can't be fixed because the standard repair technique of reinstallation won't work.
- VI. Microsoft is and never was an "innovator" no matter how much you may want to stretch the meaning of the term. Virtually all of Microsoft's products were "borrowed," licensed, bought or copied from other companies. DOS came from Seattle Computer, Windows "came" from Apple, Internet Explorer from Mosaic/ Netscape, Windows XP/NT/2000 from IBM OS/2, and so on. Without exaggeration, one could say that most of Microsoft's creative efforts have been in leveraging its products into the marketplace by whatever means possible while keeping itself out of serious legal trouble.

This is not to say that Microsoft does not make good products -- they actually make some very good ones (Powerpoint, Excel, Flight Simulator), as well as mediocre ones (Word, IE, Outlook) and some pretty terrible stuff (Access, IIS, Exchange Server). The point is that the merits of a given Microsoft product is irrelevant to how Microsoft has been able to leverage it into dominance into a given market by improper and likely illegal means, with an end result that at the very least means that many worthwhile competing products are kept away and out of sight from the average consumer.

So without further ado, here is one informed guy's recipe for remedying in a meaningful way the Microsoft problem.

#### 1) Internet Related

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**A) Allow Installation of Alternative System/Web Browser in Place of Internet Explorer ("IE")**

Despite Microsoft's claims to the contrary, this is straightforward programming issue. The Internet Explorer "uninstall" function introduced in Windows XP merely removes the IE icon from the desktop – it is not a true uninstall in any meaningful sense. A true uninstall will separate out web-access components and return basic file/disk/network access & browsing to a standalone Windows application similar if not identical to the original "Windows Explorer" program in Windows 95 and its counterpart "NT Explorer" in Windows NT. The user should be able to install and use any web browser of her or her choice, whether in its standard function for web access or in place of IE for "active desktop" access or any other internal Windows process that IE would be used above and beyond that supplied by separate "Windows Explorer" type program..

The burden will be on Microsoft to create a software program that will accomplish all this with minimal technical intervention by the user. The program must be provided free of charge.

If Microsoft is unwilling to comply with creating such a software program, a 3<sup>rd</sup> party programmer or programming group of sufficient expertise should then be designated by the court or the DOJ (depending on whose ultimate responsibility it turns out to be) to carry out the programming objectives. This should be done at Microsoft's expense and with their full cooperation in providing whatever code and system information deemed necessary by the 3<sup>rd</sup> party programmers.

*I would have to say that allowing consumers from to truly remove IE from a computer and install a competing product in its place is probably the most important antitrust remedy that can be achieved, especially for the long term. It has become obvious that Microsoft is intent on using the near universal placement of IE to mitigate further inroads by competing operating systems like Linux and to leverage itself much further into general Internet commerce and services, especially through its ".Net" initiative – which is basically a form of bundling that will ultimately make it nearly impossible for a consumer to do any sort of Internet commerce without the use of Microsoft products.*

**B) Disallow/Discourage IE As A Requirement for Accessing Any Commercial Web Site**

There is a sizable number of web sites that currently only allow access via IE. If this was done via a licensing agreement with Microsoft and not because of any valid technical reason, all such agreements should be voided. The governing body for all web standards is the World Wide Web Consortium ("W3C") and it is they who should define web standards, not Microsoft.

Microsoft itself requires the use of IE for many functions on its own web site, most especially ones related to updates to Microsoft's other products. This requirement should be voided, especially since there really aren't any valid technical reasons for doing this (Antivirus programs are quite adept at checking for updates without even a browser requirement.)

As a matter of good web commerce, companies should be encouraged to keep their web sites W3C compliant, which will eliminate dependency on any particular web browser. If it turns out

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that it would be a burdensome cost for many companies to immediately make their web sites non-IE dependent, it may be necessary to have Microsoft come up with a "application" version of IE, meaning that it installs and behaves like a normal non-Microsoft application that doesn't embed itself into the Windows operating system. IE for Apple's Macintosh works this way, so Microsoft has sufficient familiarity with how to achieve this. A user can install this application version of IE specifically to access those IE-dependent sites without it "taking over" all web/file access functions as the normal version of IE does. Still, this should be only an interim solution to allow for web sites to be made non-IE dependent without undue time pressure or burden.

### **C) Disallow IE as a Requirement for Microsoft's Other Products & Services**

There are no good valid reasons why Microsoft Word, Powerpoint, or whatever other Office component needs IE to be installed, likewise with even Microsoft's online services like MSN. Microsoft would argue otherwise, but all their technical arguments to date for unbundling IE have been disingenuous, misleading or simple outright lies. Just recently, on October 25, 2001, MSN locked out non-IE web browsers. Microsoft's explanation for this was, to put it very mildly, not very credible. The following was taken from a ZDNet news item about the matter.

*Microsoft on Thursday contended that the upgraded MSN site uses World Wide Web Consortium (W3C) standards and that browsers that don't conform to the standards are being blocked out.*

*"We supported the latest W3C standards when developing the content and services delivered from MSN," Bob Visse, the director of MSN marketing, said in an e-mail Friday. He added that Microsoft wants users to visit the Web site "regardless of the browser they choose."*

*But Visse recommended that for the best experience with MSN, customers should use a browser that tightly adheres to the W3C standard.*

*"If customers choose to use a browser that does not tightly support W3C standards, then they may encounter a less than optimal experience on MSN," he said.*

*On Thursday, he had said that the company expected to have MSN.com fully accessible to the browsers later in the day.*

The problem was actually not fixed until that following Saturday, which gave me a chance to run an experiment: on 10/26/2001 at approximately 7:00 PM EST, I went to the W3C web site and downloaded "Amaya," an experimental browser developed in conjunction with W3C standards. After installing Amaya on my computer, I went to try to access [www.msn.com](http://www.msn.com) and got this message, which was the same message all other non-IE browser users were getting:

### **Attention: Web Browser Upgrade Required to View MSN.com**

If you are seeing this page, we have detected that the browser that you are using will not render MSN.com correctly. Additionally, you'll see the most advanced functionality of MSN.com only with the latest version of Microsoft Internet Explorer or MSN Explorer. If you wish to visit

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MSN.com, please select the appropriate download link below.

Internet Explorer for Windows  
Internet Explorer for Macintosh  
MSN Explorer for Windows

[end]

Basically, in using "W3C Standards" as an excuse for requiring IE to access MSN, Microsoft outright lied. For the record, IE is the LEAST W3C compliant of all the current major web browsers, including Netscape 6.1, Mozilla, and Opera. Checking in with the W3C organization will confirm this.

The same applies to Microsoft's main site [www.microsoft.com](http://www.microsoft.com) which frequently needs to be accessed if you want to keep up with the latest security patches or updates. Ironically, it is NOT W3C compliant and makes non-IE browsers act funny. Again, a little trick that has no technical or consumer benefit.

Often, a consumer will be told he/she MUST install IE in order to use some online product or service, which is usually through some Microsoft licensing arrangement. "Quick Books Pro 2001" for example is an accounting program, but it will install IE 5.5 automatically for no genuinely good reason. And if you go to the McAfee antivirus site [www.mcafee.com](http://www.mcafee.com) using any 4.xx version of Netscape, you will be greeted with a pop-up window requesting that you download IE for the benefit of doing just a trial test of its online scanner; however, Trend Micro's online scanner at [www.housecall.antivirus.com](http://www.housecall.antivirus.com) has no such requirement.

As a side note, Microsoft also modified its Hotmail online service so that when a Hotmail user signs out, he/she is immediately redirected to Microsoft's MSN web site. While the newer non-IE web browsers don't get that annoying "Upgrade" message, older Netscape browsers do. Many public libraries in the Boston area at least have been standardized on Netscape 4.08 for a few years now, and now their many Hotmail users are getting that "Upgrade" warning once they are done, even though it has nothing at all to do with accessing Hotmail itself.

Yet more Microsoft heavy-handed "tricks" even in the midst of all the current lawsuit and antitrust activity.

## **- 2) Application Product Related**

### **A) Allow for Complete Removal of Any Installed Microsoft Product and Without the Need for the Installation CD**

Another common Microsoft "trick" is to make complete removal of its application products very difficult. Typically, a consumer will buy a new PC and find that it came pre-loaded with a Microsoft product like Works 2000, a very large and seldom used software suite. If the consumer is savvy enough to go to the "Control Panel" in Windows and try to uninstall Works via "Add/Remove" programs, he/she will be asked to insert a "Works" CD and no matter which of

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the several Works CDs get inserted, it will seem to be the wrong one. The only way to remove is to either have a very technical friend delete the all the Works registry entries and then the Works folders, or else go to the Microsoft web site and do a search on how to remove Works, and if he/she is lucky, this page will be found:

<http://support.microsoft.com/support/kb/articles/Q239/0/70.ASP>

or perhaps this page:

<http://support.microsoft.com/support/kb/articles/Q250/8/74.ASP>

Removing Office 2000 is more straightforward but still requires the installation CD. But if you need to completely remove it and reinstall it because of corruption or virus damage, then you must again go searching on the Microsoft site and if you are again very "lucky" you will find this:

<http://support.microsoft.com/support/kb/articles/Q239/9/38.ASP>

Or if you're not so lucky, you might find this instead:

<http://support.microsoft.com/support/kb/articles/Q252/5/66.ASP>

There is not a single good reason for Microsoft not to include a genuine uninstall option to its software products, either for people who want to clear them off their systems or for users who just want to fix a problem by reinstalling.

#### **B) No Automatic Replacement/Disabling of Another Company's Product or Feature**

This is seemingly covered in the DOJ settlement, but it should be made more explicit and that it covers all of Microsoft products. This sort of anti-competitor behavior is not a uniquely Microsoft trait (RealAudio is quite good at this in regards to MP3 music files) but it can be much more problematic given that it can interfere with functions critical to important business software. For instance, "LDAP" is a directory service usually built into mail server programs – a standards-based means of looking up e-mail addresses. However, if you install a Windows 2000 server and add "Active Directory Services" it takes away LDAP from any non-Microsoft e-mail server you might want to install, forcing the installer to either disable LDAP for the mail server users or else fiddle with the LDAP registry settings for mail server software, or else just give up and install Microsoft's own e-mail server program, Exchange Server. Of course Microsoft allows no such changes with its Windows LDAP settings.

#### **C) A "Bare Windows" Option With Clean Registry**

After buying a typical retail PC, a consumer is usually faced with a daunting number of unwanted programs and add-ons that come with the system above and beyond what he/she expected. Some are bundled anti-trust baiting products from Microsoft, others are "value-added" products and quasi-free trials from other vendors. This is not a good thing because those programs slow down the computer, eat up resources, and generally make the computer less stable than it should be. Removing all of these programs is usually tricky, confusing and beyond the capabilities of the average user. Microsoft should include a global "Remove" function to put the system to a basic state without any wasteful programs or registry entries. The consumer could then systematically add back any programs he/she actually needs or wants.

### Closing Thoughts

It's been shown that Microsoft blatantly violated previous agreements, that it frequently misled and outright lied about its actions, capabilities and motives, that it was totally willing to doctor evidence in its behalf, that it still tries to undermine its competition through monopolistic leverage, and that these actions have been both harmful to the consumer and hurtful for the economy by excluding better, more secure products from the marketplace. The recent incident involving MSN access to non-IE browsers clearly demonstrates that Microsoft has not mitigated its monopolistic operational behavior at all, even in the face of ongoing litigation. If Microsoft again fails to comply with what final agreement is reached with the federal and state governments, a suitably severe penalty should be applied. My suggestion is the original break-up order by Judge Jackson with the addition of the release of all Windows 95/98/ME source code. This Windows "lineage" has ended with the release of Windows XP, which follows from Windows NT/2000, a completely different code set from 95/98/ME. This will protect Microsoft's current technological investment, but would give possible competitors an opening for creating a Windows-compatible operating system. That would be a fair penalty I think.

I can only hope that at least some of what I wrote will be of some positive benefit